

QUESTIONNAIRE FOR NOMINEES BEFORE THE COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

Name: Full name (include any former names used).

Louise Wood Flanagan, nee Louise Braxton Wood

Position: State the position for which you have been nominated.

U.S. District Judge, Eastern District of North Carolina

Address: List current office address and telephone number. If state of residence differs from your place of employment, please list the state where you currently reside.

Courthouse Annex
215 South Evans St., Room 103
Greenville, NC 27858
Tel. No. (252) 830-1334

Birthplace: State date and place of birth.

Date of birth: 6/26/62
Place of birth: Richmond, VA

Marital Status: (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es). Please also indicate the number dependent children.

Married to Michael Perkins Flanagan (6/23/90)
Attorney, Ward and Smith, P.A. (Director)
120 West Fire Tower Rd.
Post Office Box 8088
Greenville, NC 27835
We have two dependent children

Education: List in reverse chronological order, listing most recent first, each college, la school, and any other institutions of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.

University of Virginia School of Law, 8/84 - 1/88 (J.D. degree received 1/88)
Wake Forest University, 8/80 - 5/84 (B.A. degree received 5/84)
Wake Forest University London Program, Spring 1983
College of William & Mary, Summer 1981

7. **Employment Record:** List in reverse chronological order, listing most recent first, all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for your services. Include the name and address of the employer and job title or job description where appropriate.

U.S. District Court for the Eastern District of North Carolina
215 South Evans St., Room 103
Greenville, NC 27858
Job: U.S. Magistrate Judge, 1995 - present (part-time)

Ward and Smith, P.A.
120 West Fire Tower Rd.
Post Office Box 8088
Greenville, NC 27835
Job: Partner, 1/94 - 7/99
Associate, 8/90 - 12/93

Sonnenschein, Nath & Rosenthal
East Tower, Suite 600
1301 K St., N.W.
Washington, DC 20005
Job: Associate, 8/89 - 6/90

U.S. District Court for the Eastern District of North Carolina
215 South Evans St.
Greenville, NC 27858
Job: Law Clerk to the Hon. Malcolm J. Howard, U.S. District Judge, 3/88 - 7/89

Center for National Security Law
University of Virginia School of Law
580 Massie Rd.
Charlottesville, VA 22903
Job: Research Assist to Prof. John Norton Moore, Fall 1985 - Spring 1987

National Endowment for the Arts
Office of General Counsel
1100 Pennsylvania Ave., NW
Washington, DC 20506
Job: Summer Intern, 5/87 - 8/87

Colonial Williamsburg Foundation
P.O. Box 1776
Williamsburg, VA 23187
Job: Seasonal Sales Clerk (Craft House), 12/86

Lovell, White Durrant
Atlantic House
Holburn Viaduct
London EC1A 2FC England
Job: Legal Assistant, 8/86 - 11/86

Royal Academy of the Arts
Burlington House
Piccadilly
London W1J 0BD England
Job: Trust Office Intern, 5/86 - 8/86

Kilpatrick Stockton, L.L.P. (formerly Petree Stockton Robinson)
1001 West Fourth St.
Winston-Salem, NC 27101
Job: Summer Associate, 5/85 - 8/85

Levy's Clothing Store
Barrack's Road Shopping Center
Charlottesville, VA
Job: Sales Clerk, 6/84 - 8/84

8. **Military Service:** Identify any service in the U.S. Military, including dates of service, branch of service, rank or rate, serial number and type of discharge received.

N/A

9. **Honors and Awards:** List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.

Member, Eastern North Carolina Inn of Court
Permanent Member, Fourth Circuit Judicial Conference

Fellowships or similar include law school sponsored fellowships to work at National Endowment for the Arts, Office of General Counsel, as summer intern, 5/87 - 8/87, and Royal Academy of the Arts, as trust office intern, 5/86 - 8/86. Carswell Scholar stipend awarded by Wake Forest University to work in Parliament, House of Lords, as research

assistant to Lord Irving, 6/83 - 8/83

Received B.A. degree magna cum laude from Wake Forest University

Phi Beta Kappa

Guy T. Carswell Memorial Scholar

Cooke-Scales Memorial Scholar

Member, Omicron Delta Kappa and Mortar Board, Leadership/Scholarship Societies

Pi Sigma Alpha, Politics Honor Society

Invited to participate in Politics Honors Program

1982 Student Marshal

10. **Bar Associations:** List all bar associations or legal or judicial-related committees, selection panels or conferences of which you are or have been a member, and give the titles and dates of any offices which you have held in such groups.

Member, North Carolina Bar Association

Member, Dispute Resolution Council (elected to term 7/02 - 6/05)

Member, Eastern North Carolina Inn of Court

Permanent Member, Fourth Circuit Judicial Conference

Former Member, Eastern District of North Carolina Local Rules Committee

Former Member, Court Historical Committee

Former Member, American Bar Association

11. **Bar and Court Admission:** List each state and court in which you have been admitted to practice, including dates of admission and any lapses in membership. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.

United States Supreme Court, admitted 2001

United States Court of Appeals for the Fourth Circuit, admitted 1993

United States District Court for the Eastern District of North Carolina, admitted 1989

United States District Court for the Middle District of North Carolina, admitted 1993

United States District Court for the Western District of North Carolina, admitted 1991

Supreme Court of North Carolina, admitted 1988

District of Columbia Courts, admitted 1989

12. **Memberships:** List all memberships and offices currently and formerly held in professional, business, fraternal, scholarly, civic, charitable, or other organizations since graduation from college, other than those listed in response to Questions 10 or 11. Please indicate whether any of these organizations formerly discriminated or currently discriminates on the basis of race, sex, or religion - either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

Member, Baywood Racquet Club
 Former Member, League Tennis Team
 Member, St. Timothy's Episcopal Church
 Former Member, St. Paul's Episcopal Church
 Former Member, Alter Guild Committee
 Former Member, St. Peter's Episcopal Church
 Member, Lector Book Club
 Former Member, Handbook Committee
 Member, Greenville Museum of Art
 Former Board Member/General Counsel
 Member, ECU Art Enthusiasts
 1995 Greenville WalkAmerica Chairperson, March of Dimes
 Former member, Phi Delta Phi Legal Fraternity
 Member, National Society of Colonial Dames of America for the State of North Carolina
 (Lenoir-Pitt Committee)
 Former Member, Historical Activities Committee

The National Society of Colonial Dames of America for the State of North Carolina is an organization whose membership is limited to women dedicated to historic preservation, and the promotion of patriotism and love of country. I have no other membership in any organization which formerly discriminated or currently discriminates on the basis of race, sex, or religion, either through formal membership requirements or the practical implementation of membership policies.

13. **Published Writings:** List the titles, publishers, and dates of books, articles, reports, or other material you have written or edited, including material published on the Internet. Please supply four (4) copies of all published material to the Committee, unless the Committee has advised you that a copy has been obtained from another source. Also, please supply four (4) copies of all speeches delivered by you, in written or videotaped form over the past ten years, including the date and place where they were delivered, and readily available press reports about the speech.

During the past ten years, my speech work has involved commentary upon only technical subject matter. A presentation April 1996 to the North Carolina Association of Magistrates Spring Conference in New Bern, North Carolina, upon request of Joan Brannon, Assistant Director of the Institute of Government, has been preserved. I attach a copy of Brannon's letter of request and my April 1996 speech materials. I am unable to locate any other speech materials.

In 1999, while still engaged in private practice, I authored an in-house manual entitled "Creditors' Rights Handbook," with private distribution of approximately 12 copies to employees of Ward and Smith, P.A., affiliated with its Creditors' Rights department. The text is a practical tool for attorneys and staff, including technical and administrative

treatment of collection matters. Ownership resides with the law firm. The manual is its proprietary material, and includes many examples of work product obtained from client files, and privileged attorney-client communications. For these reasons, I have not attached any copy.

I edited the Ward and Smith, P.A. firm newsletter for a period of years during the mid to late 1990's. I did not separately author articles in this capacity but, rather, coordinated the regional publication with circulation limited to current and prospective firm clients, which addressed legal issues considered to be of interest to the readership. At or around the time I ceased private practice, I also was editing all similar outside publications of the firm, including section specific legal bulletins. Copies are attached.

From Fall 1985 - Spring 1987, I provided research assistance to Prof. John Norton Moore, through affiliation with the Center for National Security Law at the University of Virginia School of Law. I assisted without separate attribution in preparation of various publications, including The Legal Structure of Defense Organizations prepared for the President's Blue Ribbon Commission on Defense Management. I am unable to locate any copy of any publication by Prof. Moore, in which I assisted him.

I wrote various publications in 1986 of the Royal Academy of the Arts, London, through its Trust Office, including two full proposals for corporate arts sponsorship of prospective exhibitions and three proposals disseminated and successfully concluded during my tenure, for contributions to education workshops. I also coordinated the Academy's application to the Business Sponsorship Incentive Award (administered by Her Majesty's Government, Office of Arts and Libraries). I assisted with the production of certain catalogues, including with respect to the major 1986 exhibition. I am unable to locate published materials which I prepared or edited during this assignment. However, with respect to that aspect of work related to the 1986 exhibition at the Academy, reference is made for background and informational purposes, to New Directions in British Architecture, Norman Foster, Richard Rogers, James Stirling, by Deyan Sudjic, Thames and Hudson Publishers, 1986, a comprehensive text published on the occasion of that exhibition.

I authored numerous newspaper articles and opinion pieces while attending Wake Forest University, Winston-Salem, NC from 1980 - 1984, and serving as reporter for the campus newspaper, Old Gold & Black and, later, as its editorial page editor. Copies are attached.

Major speeches given during college included a speech at Senior Colloquium honors in 1984, addressing moral relativism in the context of the rebuilding of a defense against communism. A copy is attached. I also made a speech addressing the Board of Visitors generally. I am unable to locate any copy. The award to me of the Carswell Memorial Scholarship also required me to make an annual "defense" of my performance by speech or paper to my sponsor and others associated with the academic honor. Any speech

prepared of or relating to my annual "defense" has not been maintained, though I note this academic scholarship was renewed by Wake Forest University each year.

As a culmination of my 1983 summer research project endorsed by the Carswell Scholar program including by stipend award, I presented a paper to Parliament, House of Lords Library, through the offices of Lord Irving of Dartford, DL, entitled "Membership of the U.K. in the European Communities: The Role of the House of Lords." A copy of the paper is attached, together with confirmation from Lord Irving. Also during college, I assisted in editing writings of certain members of the politics department, without separate attribution. I am unable to locate any department writings from this period in which I may have had a hand in editing or providing research assistance.

14. **Congressional Testimony:** List any occasion when you have testified before a committee or subcommittee of the Congress, including the name of the committee or subcommittee, the date of the testimony and a brief description of the substance of the testimony. In addition, please supply four (4) copies of any written statement submitted as testimony and the transcript of the testimony, if in your possession.

I have never testified before Congress.

15. **Health:** Describe the present state of your health and provide the date of your last physical examination.

Excellent. My last regular physical examination occurred in 8/02.

16. **Citations:** If you are or have been a judge, provide:

- (a) a short summary and citations for the ten (10) most significant opinions you have written;
- (b) a short summary and citations for all rulings of yours that were reversed or significantly criticized on appeal, together with a short summary of and citations for the opinions of the reviewing court; and
- (c) a short summary of and citations for all significant opinions on federal or state constitutional issues, together with the citation for appellate court rulings on such opinions.

If any of the opinions or rulings listed were in state court or were not officially reported, please provide copies of the opinions.

Responding to (a) above, requesting a short summary and citations for the ten (10) most significant opinions I have written, with direction concerning provision of copies of unreported decisions, magistrate judges' opinions are not promoted regularly for publication in my district. I supplement my list of the following cases, with provision of

copies of any unpublished opinions noted, including opinion not available on Westlaw.

1. Domestic Fabrics Corp. v. Sears, Roebuck, & Co., 212 F. Supp. 2d 489 (E.D.N.C. 2002). I undertook the case for hearing and submission to the court of recommendation for disposition as to the disputed terms and claims of the patent at issue. Such proceeding, commonly called a "Markman hearing," is conducted in accordance with decision rendered in Markman v. Westview Instruments, Inc., wherein the Supreme Court unanimously affirmed the Federal Circuit's en banc ruling that claim interpretation is exclusively within the province of the court. 517 U.S. 370, 391, 116 S.Ct. 1384, 1396 (1996), aff'g 52 F.3d 967, 979 (Fed. Cir. 1995). My recommendation was adopted in full. The case remains pending as to the issue of infringement.
2. U.S.A. v. Corbett H. Davis, III, 7:95-M-120. Decision was rendered in judgment December 15, 1995, after a two day trial on eight counts alleging violation of migratory bird laws, contained in Chapter 7 of Title 16, which resulted in finding of guilt on four of the counts and, later, imposition of a term of imprisonment. The was the first prison sentence imposed in North Carolina for violating waterfowl hunting regulations.
3. Wilson Land Corp. v. Smith Barney, Inc., 48 Fed. R. Serv. 3d 1298 (E.D.N.C. 2000), see also Wilson Land Corp. v. Smith Barney, Inc., 2000 WL 1745241 (E.D.N.C. 2001). I cite these opinions, and would note several others not disseminated, also made a part of the court's file bearing Case No. 5:97-519-BR, for treatment of complicated pretrial discovery issues in a multi-million dollar suit premised upon alleged FRISA violations. The significance of the matter does not, however, fully reveal itself upon inspection of my writings, where after numerous decisions on motions in discovery, I presided at the parties' request over a class action mediation proceeding which involved distinct attorney teams composed of approximately 15 to 20 attorney members total, several subclasses of plaintiffs with numerous individual representatives in attendance, and two divergent corporate defendants, also as shown on the record. Individual pre-mediation sessions were undertaken, culminating in a general mediation session which extended approximately four days. The mediation successfully concluded all matters at issue, where trial had been anticipated to extend as long as five weeks.
4. Mittler v. U.S.A., 150 F.Supp. 871 (E.D.N.C. 2001). This opinion addressed deprivation of petitioner's Sixth Amendment right to assistance of counsel. Published decision includes my memorandum and recommendation together with the district judge's order adopting my recommendation.
5. Bond v. United States, U.S. District Court for the Eastern District of North Carolina Case Nos. 4:99-CR-16-H & 4:00-CV-31-H. The case came before me

also on referral pursuant to 28 U.S.C. § 2255. This is another detailed treatment of an ineffective assistance of counsel claim, where concluding recommendation also was adopted by order of the district judge. Copies are attached.

6. Scott v. Glickman, 199 F.R.D. 174 (E.D.N.C. 2001). This opinion considered and decided issues arising in discovery concerning the effect of inadvertent disclosure of privileged documents.
7. Rackley v. Apfel, 1999 WL 1939979 (E.D.N.C. 1999). This was an action pursuant to § 205(g) of the Social Security Act, 42 U.S.C. § 405(g), for judicial review of the denial of application to the Social Security Administration for a period of disability and disability insurance benefits. I cite to the case as an example of a significant area of civil law upon which I issued this and many other memoranda and recommendation pronouncing on review upon the sufficiency of the Administrative Law Judge's decision. This and every other memorandum and recommendation in this area, to the best of my knowledge, was adopted fully upon presentation to the responsible district judge.
8. Napier v. Wells Fargo Home Mortgages, Inc., U.S. District Court for the Eastern District of North Carolina Case No. 5:01-CV-181-H. This case is a proposed class action suit, wherein numerous discovery issues have been presented, including request for nationwide discovery. I denied that request to extend the scope of discovery beyond past and present employees of defendant in one geographic region in an order entered June 27, 2002. The district judge upheld my rulings in discovery in their entirety by order filed September 25, 2002, wherein he also granted request for certification of interlocutory appeal. On October 24, 2002, the Fourth Circuit denied the petition for permission in Case No. 02-262. The lawsuit remains pending. Copies are attached.
9. U.S.A. v. Paul Scinto, U.S. District Court for the Eastern District of North Carolina Case No. 4:01-CR-59-H. I cite to the case as an example of a significant area of criminal law upon which I issued this and several other memoranda and recommendation pronouncing upon suppression issues. This and every other memorandum and recommendation in this area, to the best of my knowledge, was adopted fully upon presentation to the responsible district judge.
10. Bryant-Durham Electric Co., Inc. v. Blake Construction Co., Inc., U.S. District Court for the Eastern District of North Carolina Case No. 5:98-CV-186. The case is significant because of its scale and complexity, in terms both of the evidentiary materials and the legal issues presented, where issues in construction of a prison medical facility in North Carolina arose between contractors and made their way into federal court on breach of contract theories presented in claims and counterclaims seeking millions of dollars. It was assigned to me upon the parties'

request for court-hosted settlement conference and I determined to utilize a private construction law expert as the magistrate judge's co-mediator, upon consent of the parties. This technique had not been utilized before in the district, to the best of my knowledge. Upon my presentation, the process was endorsed by the parties, and, while the case did not conclude during the lengthy mediation process over which I presided together with the court's co-mediator, ultimately it did settle. The case is a significant one in my estimation because it engaged court sponsored alternative dispute resolution procedures in this district not previously undertaken. This may prove of continued viability in effective, efficient resolution of similar types of technical, document intensive cases, which can absorb a significant amount of court resources upon any trial.

Responding to (b) above, requesting a short summary and citations for all rulings that were reversed or significantly criticized on appeal, together with a short summary of and citations for the opinions of the reviewing court, I provide the following:

I have issued approximately 40 substantive memoranda and recommendations in dispositive matters to the district judges in civil and criminal cases. Upon examination of the records, I note that all recommendations have been adopted fully with the exception of Memorandum and Recommendation in U.S.A. v. Dwight L. Hill, et al., U.S. District Court for the Eastern District of North Carolina Case No. 5:98-CV-767-BO. The case involved consideration of two motions for partial summary judgment by defendants variously seeking dismissal in a civil action involving alleged false statements in connection with the Farm Service Agency's Disaster Assistance Program where the government sued under the False Claims Act, 31 U.S.C. § 3729(a)(1), (2), and (3), and for common law fraud, unjust enrichment, and payment under mistake of fact. I recommended to the district judge that both motions be dismissed in full. The court through the Hon. Terrence W. Boyle, U.S. District Judge, declined to adopt that part of my treatment of claims under 31 U.S.C. § 3729, wherein I had recommended denial of motion also as it related to (a)(3) and conspiracy, on grounds that where there was no other proffered evidence of intent to defraud, certain assignment of powers of attorney raised no inference of the required intent. In all other respects, the court's brief order adopted my recommendation. Neither of the opinions was published. Copies are attached.

To the best of my knowledge, no appeal has ever been taken of any order that I have entered as to non-dispositive pleadings issues, or in discovery in either a criminal or civil matter, with the exception of Napier v. Wells Fargo Home Mortgages, Inc., U.S. District Court for the Eastern District of North Carolina Case No. 5:01-CV-181-H, noted above, in which I was affirmed by the district judge.

As to preliminary felony matters, in the seven plus years in which I have made custodial determinations numbering now in the many hundreds, I can recall only one case with certainty where order deciding a motion for detention was overturned on appeal. I am

reviewing records to ascertain this information.

Responding to (c) above, requesting a short summary of and citations for all significant opinions on federal or state constitutional issues, together with the citation for appellate court rulings on such opinions, I provide the following:

I have not been presented with many issues requiring me to expressly determine federal or state constitutional issues. Reference is made to cases cited at para. nos. 4 and 5 above, wherein I addressed alleged deprivation of the Sixth Amendment right to assistance of counsel.

17. **Public Office, Political Activities and Affiliations:**

- (a) List chronologically any public offices you have held, federal, state or local, other than judicial offices, including the terms of service and whether such positions were elected or appointed. If appointed, please include the name of the individual who appointed you. Also, state chronologically any unsuccessful candidacies you have had for elective office or nominations for appointed office for which were not confirmed by a state or federal legislative body.

I have not held public office nor have I been a candidate for office.

- (b) Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

No, I have not.

18. **Legal Career:** Please answer each part separately.

- (a) Describe chronologically your law practice and legal experience after graduation from law school including:

- (1) whether you served as clerk to a judge, and if so, the name for the judge, the court and dates of the period you were a clerk;

I served as law clerk to the Hon. Malcolm J. Howard, United States District Judge, from March 1988 - July 1989 (first law clerk). In this capacity, I researched and drafted legal opinions in excess of 100 civil and criminal cases.

- (2) whether you practiced alone, and if so, the addresses and dates;

No, I have never practiced alone. My career affiliations have been with the federal

government or with a firm of practitioners.

- (3) the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been affiliated, and the nature of your affiliation with each.

I worked as an associate at the international law firm of Sonnenschein, Nath & Rosenthal, in its Washington, DC office, immediately upon completion of my federal clerkship in 1989. The term of employment concluded in June 1990, upon my marriage and relocation to North Carolina. The firm's current address is East Tower, Suite 600, 1301 K St., NW, Washington, DC 20005.

I was a partner with the law firm of Ward and Smith, P.A. from January 1995 until I resigned in July 1999, to work as magistrate judge exclusively. The firm has offices in New Bern, Wilmington, Raleigh, and Greenville, NC. I was resident in the Greenville office. I worked as an associate in the firm from August 1990 until becoming partner in 1995. The firm's address is 120 West Fire Tower Rd., PO Box 8088, Greenville, NC, 27835.

I serve the United States District Court for the Eastern District of North Carolina as magistrate judge. I have held the position, designated as part-time with substantial duties, since 1995. My work address is Courthouse Annex, Room 103, 215 South Evans St., Greenville, NC 27858. Initially, upon appointment in 1995, criminal duties entailed the bulk of my responsibilities, with some civil responsibilities added during the first term, limited to social security appeals. During the relevant period, I concluded through memoranda and recommendations a significant percentage of the district's work in the area of social security appeals. For several years, I also regularly presided over the misdemeanor docket at Fort Bragg, Fayetteville NC. In 1999, I resigned from private practice to work exclusively as magistrate judge, at a level approximating that of a full-time magistrate judge. As described in my response to 18(h) below, the scope of my duties materially expanded at or about the time of my reappointment in 1999, to include extensive civil and pre-trial felony work. I also preside over misdemeanor cases presented in Greenville NC.

- (b) (1) Describe the general character of your law practice and indicate by date if and when its character has changed over the years.

As an associate from 1989 until 1990 in the Washington, DC offices of Sonnenschein, Nath & Rosenthal, I worked mainly in the firm's general litigation section while performing some work for its environmental group. The firm served as general counsel to Sears and related corporate entities, including Allstate Insurance Company and Coldwell Banker. I was assistant counsel in litigation in numerous insurance defense cases and employer-employee disputes arising in or around the southeastern United States. I also

assisted in the litigation of several major lawsuits under state and federal environmental laws. I relocated to North Carolina in summer 1990, upon my marriage, and commenced employment with Ward and Smith, P.A., in the firm's creditors' rights practice group, based in its Greenville NC office

Beginning in 1990, my practice evolved into a statewide one. My work around North Carolina involved assisting clients, including financial institutions, insurers, corporations, small business operators, and individuals, in matters involving the creditor-debtor relationship. In addition to routine collection actions, I handled loan restructuring and workouts, and conducted complex commercial litigation in state, federal, and bankruptcy courts.

My practice also involved forfeiture defense work, defense of lender liability claims, and limited debtor defense work. I pursued pre-judgment collateral recovery efforts on behalf of clients, undertook other remedial actions, and oversaw judgment enforcement actions. I handled all manner of court room proceedings, from ancillary hearings to dispositive motions hearings, to trial work, and appellate work. The majority of my cases were able to be disposed of on motions, though some proceeded and were tried to conclusion and others resolved after conduct of settlement negotiations. The appellate work was substantial, separate and apart from overseeing the progress of an average of one hundred cases at the trial level at any given time.

In addition to these work activities, and my involvement as editor of firm publications for a number of years, I also assumed a role in training and development of staff and young attorneys, regularly preparing and conducting training programs. My work for the firm also included participating in a supervisory capacity in the firm's summer law clerk program.

Upon my appointment as magistrate judge in 1995, I continued in my private practice as permitted while performing the duties of magistrate judge on a part-time basis. These duties were limited mainly to preliminary criminal matters and social security appeals.

In May 1999, I succeeded to a second term as magistrate judge and thereafter resigned my partnership effective July 1999. I did so in order to pursue exclusively judicial work on behalf of the district. My work approximated that of a full-time magistrate judge, materially expanding to include substantial criminal assignments and civil duties.

I have presided over many, varied criminal matters. These include felony criminal matters ranging from initial appearances, detention hearings and bail reviews, grand jury sessions, fee applications, and issuance of warrants and related process, decision on non-dispositive motions (usually discovery disputes), and issuance of memoranda and recommendation to the district judges on dispositive motions, sometimes after evidentiary hearing. I also have presided over many misdemeanor cases to conclusion.

Civil work regularly includes attendance to case scheduling matters, decisions on pleadings issues raised by motion, resolution of disputes in discovery, recommendation upon dispositive legal motions referred by the district judges, which may require evidentiary hearing, preparation of proposed orders for the district court upon request, conduct of pretrial conferences, and otherwise assisting in preparation of civil matters for trial. While litigants historically do not consent in this district to magistrate judge jurisdiction, I have carried on my docket several civil consent cases, including jury trial matters. I also have overseen disposition of numerous social security appeals during my court service, by memorandum and recommendation. I have acted as special master in complex civil litigation for the court. Routinely, I am designated by the district judges to preside over civil cases at court-hosted settlement conference. This conference work comes by direct appointment, and frequently also upon request of the litigants.

- (1) Describe your typical former clients, and mention the areas, if any, in which you have specialized.

In private practice in Washington, D.C., where the firm served as general counsel to Sears and related corporate entities, clients tended to be large corporations, like Sears, Allstate Insurance Company, and Coldwell Banker. I provided representation in litigation in numerous insurance defense cases and employer-employee disputes arising in or around the southeastern United States and also assisted in the litigation of several major lawsuits under state and federal environmental laws.

In summer 1990, I commenced employment with Ward and Smith, P.A., in the firm's creditors' rights practice group, based in its Greenville, NC office. I incorporate in response to this question my response to 18(b)(1) above, wherein I discussed in particular the creditors' rights practice area in which I specialized.

Typical former clients whom I served included an array of financial institutions clients, with counsel having been provided regularly by me to First-Citizens Bank & Trust Company (for whom Ward and Smith, P.A. served as general counsel), Heritage Bank, Fidelity Bank, Southern Bank and Trust Company, and Wachovia Bank, N.A.

I represented title insurance companies, including Chicago Title Insurance Company, life insurance companies, with representation provided frequently to TIAA-CREF, and regional and local corporate clients, partnerships, and proprietorships. Former clients, among others, were Lowe's, Ferguson Plumbing, New Bern Building Supply Co., Inc., Craven Electric Supply Co. Inc., Askew's Home Builders, Inc., and Greenville Winnelson Co.

I also counseled individuals to whom obligations were owed, and in some instances, individuals against whom creditors were proceeding or threatening to proceed.

- (c) (1) Describe whether you appeared in court frequently, occasionally, or not at all. If the frequency of your appearances in court varied, describe each such variance, providing dates.

In private practice, I appeared in court frequently, sometimes 2 to 3 times a week.

- (2) Indicate the percentage of these appearances in

- (A) federal courts;
- (B) state courts of record;
- (C) other courts.

I estimate that the percentage of my appearances in federal courts over the course of 10 years in private practice to be 10%, and that 90% of my appearances were in state courts of record.

- (3) Indicate the percentage of these appearances in:

- (A) civil proceedings;
- (B) criminal proceedings.

I did not practice criminal law in the private sector. My private practice was wholly a civil one, therefore 100% of my appearances were in civil proceedings.

- (3) State the number of cases in courts of record you tried to verdict or judgment rather than settled, indicating whether you were sole counsel, chief counsel, or associate counsel.

In my private practice, I estimate that I litigated 300 or more cases to conclusion in state and federal courts over the 10 year period in which I practiced in North Carolina, including disposition on motion, usually upon hearing and after conduct of discovery procedures on summary judgment. Some cases proceeded to be tried; however, the vast majority of cases I litigated in private practice, usually as sole or lead counsel from approximately 1994 forward, were concluded favorably at the motions stage. Other cases not tried to conclusion typically were resolved through loan workouts and other negotiations, often after concluding confessions of judgment or consent judgments. In the entirety of my private practice, I estimate that I acted as sole counsel in 75% of all cases, chief counsel in 10%, and assistant counsel in 15% of these cases.

- (4) Indicate the percentage of these trials that were decided by a jury.

No case was decided by jury.

- (d) Describe your practice, if any, before the United States Supreme Court. Please supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the U.S. Supreme Court in connection with your practice.

I have not appeared before the Supreme Court.

- (e) Describe legal services that you have provided to disadvantaged persons or on a *pro bono* basis, and list specific examples of such service and the amount of time devoted to each.

Over the course of my private practice in North Carolina, commencing in 1990, I regularly provided counsel without charge to persons in the community with credit issues. Time spent would be dependent upon circumstances presented, and ranged from counseling over the telephone, to a personal conference, to an attempt to solicit assistance from others in providing additional advice and counsel. It also was informal practice group policy during a substantial part of my legal career to have directed to me inquiries received from debtors, seeking counsel as to specific debtor-creditor relationships, and where assistance could not directly be provided, I would refer these persons to lawyers in the community who represent debtor clients, as my practice largely was creditor-based. I estimate I addressed between 50 and 75 individual debtors' concerns.

In 1995 I marshaled the resources of the law firm towards significant contribution to the March of Dimes, a non-profit organization committed to saving babies with research to prevent premature birth, birth defects, and genetic diseases, through a fund-raising campaign in Greenville NC. The firm endorsed upon my request my chairmanship of the 1995 WalkAmerica campaign, then one of the largest charity events for this organization in eastern North Carolina. It assisted in and promoted my direct efforts and substantial contribution of time in planning, promotion, and solicitation of corporate and individual donations, and supported these activities with technical and financial support of many of its members. Approximately \$25,000.00 was raised upon conclusion of the campaign.

I represented without charge a local arts organization engaged in community outreach and in the promotion of education in the arts between 1995 and 1999. My service necessitated work in numerous legal areas.

19. **Litigation:** Describe the ten (10) most significant litigated matters which you personally handled, and for each provide the date of representation, the name of the court, the name of the judge or judges before whom the case was litigated and the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties. In addition, please provide the following:

- (a) the citations, if the cases were reported, and the docket number and date if

- unreported;
 - (b) a detailed summary of the substance of each case outlining briefly the factual and legal issues involved;
 - (c) the party or parties whom you represented; and
 - (d) describe in detail the nature of your participation in the litigation and the final disposition of the case.
1. USA v. Two Tracts of Real Property, 998 F.2d 204 (4th Cir. 1993) (Judges Ervin, Mumaghan, and Restani). I defended in 1993 certain real property in a federal forfeiture action, including appeal by the U.S. Attorney for the Eastern District to the U.S. Court of Appeals for the Fourth Circuit. The Fourth Circuit affirmed the decision of the Hon. James C. Fox, U.S. District Court Judge, and ruled the property was not subject to federal forfeiture. I successfully argued before the Fourth Circuit for a narrower interpretation of 21 U.S.C. § 881(a)(7). The statute provides an exception to the government's right to arrest property that facilitates certain crimes and this protects property that is used without the "knowledge or consent" of the owner of that property. The property in this instance fell within that exception to the statute. At the time the criminal activity occurred, the drug trafficker's father owned the real property and he did not consent to criminal usage. This often discussed opinion of the Fourth Circuit has served to clarify exception to federal forfeiture. I was lead counsel and made the arguments before the Fourth Circuit on behalf of the title insurer. Co-counsel was Michael P. Flanagan, Ward and Smith, P.A., 120 West Fire Tower Rd., P.O. Box 8088, Greenville, NC 27858 (tel. no. (252) 215-4017). Opposing counsel was Norman Acker, Assistant U.S. Attorney, Terry Sanford Federal Building, Suite 800, 310 New Bern Ave., Raleigh, N.C. 27801 (tel. no. (919) 856-4530).
 2. First-Citizens Bank & Trust Company v. 4325 Park Road Associates, Ltd., Lat W. Purser, III, Thomas E. Norman, and E. Judson McAdams, 133 N.C. App. 153, 515 S.E.2d 51 (1999). I represented the creditor, First-Citizens Bank & Trust Company (for whom the law firm served as general counsel), in a collection suit instituted in Mecklenburg County Superior Court against the maker and guarantors of a promissory note to plaintiff's predecessor, Mutual Savings & Loan Association. Issues arose concerning interpretation of the contract of guaranty and language written on the face of the note, on which there was due and owing in excess of \$500,000.00, and attorneys' fees. The trial court adopted the creditor's interpretation, and affirmed adherence to the written language of the contract, over vigorous attempt in opposition to promote a result subjecting the debtors to far less liability. The case has served to clarify under North Carolina law that where the promissory note limits the maximum liability of each guarantor to a sum certain, that amount includes the guarantors' liability for attorney's fees incurred by the holder in the action on the note. Defendants appealed to the North Carolina Court of Appeals, which affirmed after hearing. Petition for discretionary review to

the North Carolina Supreme Court later was denied, as reported at 350 N.C. 829, 539 S.E.2d 284 (1999). I was lead counsel. Co-counsel was Michael P. Flanagan, Ward and Smith, P.A., 120 West Fire Tower Rd., P.O. Box 8088, Greenville NC 27858 (tel. no. (252) 215-4017). Opposing counsel was James H. Wade of the Mecklenburg County bar. I do not believe that Mr. Wade is engaged now in the practice of law as attempt to locate through the North Carolina Legal Directory has not been successful.

3. Peron Lee Griffin, et al. v. Ford Consumer Finance Co., et al., 812 F.Supp. 614 (W.D. 1993) Mortgagors filed a class action suit in Mecklenburg County Superior Court against lenders alleging violations of the Truth in Lending Act, 15 U.S.C. §§ 1601, et seq., certain Federal Reserve Board regulations, and a host of common law and state statutory claims of or relating to an alleged fraud scheme involving other defendants, including several purported mortgage assistance entities, that caused plaintiffs to engage in title exchanges with "loan backers" with which they were connected by the mortgage assistance entities. My client, First-Citizens Bank & Trust Company, was among another group of defendants, composed of several lending institutions, who paid money in exchange for security interests in plaintiffs' homes to the "loan backers," without knowledge of the alleged underlying fraud scheme. The case came before the District Court for the Western District of North Carolina on the docket of the Hon. Robert D. Potter, U.S. District Judge, upon another lending institution's removal of the case, and on plaintiffs' subsequent motion to remand. The court remanded the case to state court upon a considered treatment of 28 U.S.C. § 1441, including the "separate and independent claim" language of § 1441(c), in the context of a suit involving categories of defendants alleged to have contributed to one injury from the face of the complaint. I endorsed the remand of this case back to state court. Ultimately, I achieved a voluntary dismissal by plaintiffs of any claims against the client. I was lead counsel for my client. Co-counsel was Michael P. Flanagan, Ward and Smith, P.A., 120 West Fire Tower Rd., P.O. Box 8088, Greenville, NC 27858 (tel. no. (252) 215-4017). Kenneth L. Schorr and Robert E. Hempson of Legal Services of the Southern Piedmont, 1431 Elizabeth Ave., Charlotte, NC 28204 represented plaintiffs (tel. no. (704)786-4145). Other defendants in the action were represented by Robert B. McNeill, Horack Talley Pharr & Lowndes, 2600 One Wachovia Center, 301 South College St., Charlotte, NC 28202-6038 (tel. no. (704)377-2500) and Hugo A. Pearce, III, Burris, MacMillan, Pearce and Burris, Suite 100, 6857 Fairview Rd., Charlotte NC 28210 (tel. no. (704) 365-2600).
4. First-Citizens Bank & Trust Company v. McLamb, et al., 112 N.C. App. 645, 439 S.E.2d 166 (1993). This case originated in Johnston County Superior Court, before Judge Robert L. Farmer. I defended a motion to dismiss, prosecuted a motion for partial summary judgment, and obtained a money judgment on behalf of First-Citizens Bank & Trust Company, which I subsequently executed upon. I

also defended appeal by the guarantors of the trial court's judgment. The guarantors pressed that there had been a material alteration of the contract, to which they had not agreed, and, therefore, they should be discharged from their obligation under established case law. I note the case because aspects of the law of guarantors, and impact thereon of surety considerations, were not particularly clear under North Carolina law. The court upheld a literal reading of the terms of the guaranty, dispensed with defendants' argument drawing distinctions between contracts of guaranty and ones of surety, and upheld under the Uniform Commercial Code ("U.C.C."), with reference to a provision which had not then received much consideration under North Carolina law, the right of the creditor to enforce the terms of the guaranty agreement under which the defendants had waived any defense of discharge. I was lead counsel. Co-counsel was Michael P. Flanagan, Ward and Smith, P.A., 120 West Fire Tower Rd., P.O. Box 8088, Greenville, NC 27858 (tel. no. (252) 215-4017). Opposing counsel was Joseph N. Callaway, Battle Winslow, Scott & Wiley, 2343 Professional Dr., P.O. Box 7100, Rocky Mount, NC 27804 (tel. no. (252) 937-2200).

5. Wachovia Bank of North Carolina, N.A. v. Doug Eggleston and Car Craft, Inc., Wayne County Superior Court Case No. 91-CVS-181. On behalf of the creditor plaintiff I brought suit against Car Craft, Inc., an eastern North Carolina car dealership, together with its owner, who were engaged in a check-kiting scheme. Checks variously were deposited between the Wachovia account and one maintained in the name of another dealership with a West Virginia bank over a period of time. Between January 2, 1991 and January 6, 1991, six checks made payable to Car Craft, Inc. and drawn on the West Virginia dealership's account totaling in excess of \$2,600,000.00, were dishonored by the Bank of White Sulphur Springs in West Virginia. The uncollectible checks immediately were charged back to the Car Craft, Inc. account with Wachovia, resulting in a negative balance or overdraft of \$2,209,602.42. While aggressive efforts were undertaken to minimize losses by establishing immediate claims to assets, a multi-count suit commenced premised upon U.C.C. violations, violation of the state's Unfair and Deceptive Trade Practices Act and certain common law claims. This concluded upon motion for partial summary judgment, where I argued for that judgment entered August 13, 1991, by Judge James R. Strickland of the Wayne County Superior Court, in the amount of \$1,842,174.00. Upon judgment becoming final, further attempts were undertaken to locate and levy additional property in satisfaction of the judgment. These efforts persisted through additional discovery and included efforts to levy obligations of third parties owed to the judgment debtors. It was also a very sad case on a personal note, in that the bank executive who deemed himself responsible for the account on behalf of our client committed suicide within hours of ascertaining the loss. I acted as co-counsel with Michael P.

Flanagan, Ward and Smith, P.A., 120 West Fire Tower Rd., P.O. Box 8088, Greenville, NC 27858 (tel. no. (252) 215-4017). Opposing counsel was Glenn A. Barfield, 231 E. Walnut St., P.O. Drawer 7, Goldsboro, NC 27533 (tel. no. (252) 735-6420).

6. First-Citizens Bank & Trust Company v. Universal Underwriters Insurance Co., 113 N.C. App. 792, 440 S.E.2d 304 (1994). On behalf of First-Citizens Bank & Trust Co., I successfully appealed the ruling of Superior Court Judge G.K. Butterfield on summary judgment in favor of the defendant insurance carrier to the North Carolina Court of Appeals. The significance of this case was not in the law, as the area of law concerning interpretation of an assignment of the right to payment after loss under an insurance policy already was well-established. Rather, it was remarkable to me that in this circumstance a policy that did not prohibit assignment of payment by its express terms could ever be construed in favor of the assertion by the drafter of the policy that the assignment was invalid under the policy terms (and that the creditor would be permitted to seek relief in this instance only from the defunct auto dealer that entered into the assignment at issue). Appeal to the North Carolina Court of Appeals was immediate, and decision by Judge Sidney S. Eagles on briefs, concurred in by Judges Arnold and Wells, resulted in reversal and remand for entry of an order granting summary judgment on the issue of liability to my client. The case is recognized for that proposition that an assignment of the mere right to payment after loss in no way broadens the scope of coverage of insurable risks. I was sole counsel. Opposing counsel was Stuart L. Stroud, Wallace, Morris & Barwick, 131 S. Queen St., P.O. Box 3169, Kinston, NC 28502 (tel. no. (252) 523-2000).
7. United States of America v. Wanchese Shiplift, Inc., James H. Hudson, and Pauline J. Hudson, U.S. District Court for the Eastern District of North Carolina Case No. 92-27-CIV-2-D. In this case I represented individual guarantors sued by the U.S. on behalf of the Small Business Administration ("S.B.A.") for the remaining balance of a loan made in 1981 to the corporate defendant for the purpose of building and maintaining a shiplift facility on land leased from the North Carolina Seafood Industrial Park, located in the Wanchese Seafood Industrial Park, in the principal amount of \$500,000.00. In excess of that amount was owing, well over the guarantors' liability cap of \$165,000.00. Default judgment was entered against the corporate defendant for the full amount and the government proceeded to attempt to collect on the Hudsons' guaranty. I mounted an aggressive defense that the guaranty was unenforceable largely on grounds that the collateral which secured the obligation had been wasted by the creditor. I met the government's summary judgment motion with one on our clients' behalf raising

these issues. The guarantor contract provided in relevant part that the Hudsons maintained rights against the S.B.A. for any deterioration, waste, or loss caused by the willful act or willful failure to act of the S.B.A.. In a case deemed one of first impression in the circuit, the court found discharge possible if the Hudsons could prove intentional diminution of value of the collateral by the S.B.A. in an attempt to cause them economic injury. There was substantial evidence to show on this point, that the S.B.A. intentionally determined to "lose" the collateral to the North Carolina Seafood Industrial Park by failing to respond to its 1990 demand that it cure default by the corporate debtor under a lease agreement assumed by the S.B.A.. This caused it to lose its lien rights, to the ultimate detriment of the Hudsons, by rendering it unable to consummate a proffered transaction for the sale of these assets. The evidence was met by a showing on the part of the government that there had been no intent in these actions to harm. Our case hinged upon that issue of intent, ordinarily a difficult one to succeed upon in a motion for summary judgment. The court, through decision rendered by the Hon. F.T. Dupree, U.S. District Judge, entered March 1, 1993, denied the government's motion and the one for summary judgment made on behalf of the Hudsons, with explicit finding, however, that evidentiary showing by defendants on the issue raised concerning the S.B.A.'s alleged willful conduct, while "not so one-sided as to warrant the entry of summary judgment in favor of defendants," was sufficient for the question to be submitted to the fact finder. Settlement agreement eventually was reached. I effectively functioned as sole counsel throughout the litigation. Opposing counsel was Norman Acker, Assistant U.S. Attorney, Terry Sanford Federal Building, Suite 800, 310 New Bern Ave., Raleigh, N.C. 27801 (tel. no. (919) 856-4530).

8. Smith, et al. v. Underwood, et al., 113 N.C. App. 35, 437 S.E.2d 512 (1993). I served as co-counsel for the defendant in this complex trust litigation matter. An action was brought against the defendant by numerous trust beneficiaries seeking his removal. The Pitt County Clerk of Court denied the petition. Superior Court Judge D.B. Herring, Jr., also denied the petition, and awarded fees to both parties. I was involved with the cross-appeals which followed to the North Carolina Court of Appeals. The mainly favorable ruling by the lower court was reversed in decision by Judge Johnson of the Court of Appeals, concurred in by Judge Cozart, and dissented from by Judge John. The Court of Appeals found that the trial court had abused its discretion by failing to remove the trustee. I assisted also in appeal to the North Carolina Supreme Court, which subsequently reversed the North Carolina Court of Appeals and reinstated judgment of the Superior Court in favor of the trustee. The court's per curiam decision, adopting the reasoning of the dissent for the Court of Appeals, is reported at 336 N.C. 306, 442 S.E. 2d 322 (1994). In appeal matters, I served as co-counsel with lead counsel A. Charles

Ellis, Ward and Smith, P.A., 120 West Fire Tower Rd., P.O. Box 8088, Greenville, NC 27858 (tel. no. (252) 215-4000). Opposing counsel included John Walter Bryant, Bass, Bryant, and Farney, 9th floor, 16 W. Martin St., P.O. Drawer 909, Raleigh, NC 27602 (tel. no. (919) 832-9661).

9. First-Citizens Bank & Trust Company v. Sherif E. Esmat, Mecklenburg County Superior Court File No. 93-CVS-9398. This was a foreclosure deficiency suit brought under Chapter 45 of the North Carolina General Statutes, providing for recovery of any deficiency upon foreclosure by the secured creditor in certain circumstances. This case arose from the succession by First-Citizens Bank & Trust Company to the interests of Mutual Savings & Loan Association, a savings and loan operation of sizeable scale which had operated in and around Charlotte, North Carolina, and was purchased by the client in the early 1990's. As a part of my work activities, I handled numerous deficiency actions arising out of Mutual's loan operations, including this case, significant in part because it was one of the few to have gone to trial. There was no dispute as to the underlying obligation; rather, dispute centered upon the reasonableness of the creditor's bid for the collateral in the amount of \$122,500.00 where there was a total indebtedness due and owing in the amount of \$209,824.41, leaving a deficiency upon application of the foreclosure proceeds in excess of \$90,000.00. The case was significant also because of practical difficulties, where the defendant resided out-of-the-country for significant periods, access to documentation was cumbersome, and efficient administration of the case hindered somewhat by a change in counsel, a failed mediation attempt, and procedural delays. While these are difficult cases legally to prevail upon, when contested on the basis of the reasonableness of bid pursuant to N.C.Gen.Stat. § 45-21.36, I determined in consultation with the client that, all things considered, it was an important one to try. The case proceeded to trial over a two day period, before Superior Court Judge Marvin K. Gray, and concluded successfully with sizeable judgment entered October 9, 1996, in favor of the bank together with award of attorneys' fees. I acted as sole counsel in the case. Opposing counsel was Michael F. Schultze, Cranford, Schultze and Tomchin, P.A., 2813 Coltsgate Rd., Suite 200, Charlotte, NC 28211 (tel. no. (704) 442-1010).
10. Ernest C. Richardson, III, Trustee in Bankruptcy for Martin Schwarz v. TIAA-CREF, 123 B.R. 540 (E.D.N.C. 1991). I assisted in appeal of an unfavorable ruling in the U.S. Bankruptcy Court for the Eastern District of North Carolina on behalf of the client, TIAA-CREF, through preparation of the appellate brief and oversight of the appeal process. This case was among my first work assignments in private practice in North Carolina. In the brief submitted to the

court, in the matter pending before the Hon. W. Earl Britt, U.S. District Judge, I argued on behalf of the client that the bankruptcy court erroneously concluded that the debtor-professor's interest in supplemental retirement annuities established by his employer should not be excepted from property of his estate. The district court declined to endorse our position on appeal predicated upon differing analysis as to restrictions under the Bankruptcy Code, 11 U.S.C. § 541, and the Internal Revenue Code, 26 U.S.C. § 403, together with state statute governing exemption of rights accrued to participants under the North Carolina retirement system for teachers and state employees, and considerations of public policy. In significant part, the court rested its decision upon a public policy determination, that the debtor's ability to surrender the annuities for cash value before payments began meant that, as a matter of public policy, the annuities could not be excepted from property of the estate though the contract establishing the annuities contained anti-alienation and assignment provisions enforceable under both federal tax law and state law. Co-counsel was Michael P. Flanagan, Ward and Smith, P.A., 120 West Fire Tower Rd., P.O. Box 8088, Greenville, NC 27858 (tel. no. (252) 215-4017). Opposing counsel was Ernest C. Richardson, III, 503 Pollock St., New Bern, NC 28563. Tel. no. (252) 633-2470.

20. **Criminal History:** State whether you have ever been convicted of a crime, within ten years of your nomination, other than a minor traffic violation, that is reflected in a record available to the public, and if so, provide the relevant dates of arrest, charge and disposition and describe the particulars of the offense.

No, I have not.

21. **Party to Civil or Administrative Proceedings:** State whether you, or any business of which you are or were an officer, have ever been a party or otherwise involved as a party in any civil or administrative proceeding, within ten years of your nomination, that is reflected in a record available to the public. If so, please describe in detail the nature of your participation in the litigation and the final disposition of the case. Include all proceedings in which you were a party in interest. Do not list any proceedings in which you were a guardian *ad litem*, stakeholder, or material witness.

The only civil or administrative proceeding implicated by this question in which I was named a party is the case Seymour Smith v. T.G. Shane, Billy Vandiford, Sandra Gaskins, and Louise Flanagan, Case No. 4:96-CV-68, filed May 13, 1996 in the U.S. District Court for the Eastern District of North Carolina. The case was a wrongful attempted transfer by Seymour Smith of a collections suit I instituted in 1994 against Smith, a Pitt County, NC resident, in Pitt County Superior Court, Case No. 94-CVS-481, on behalf of a creditor

client. It was dismissed and dismissal later affirmed by the U.S. Court of Appeals for the Fourth Circuit.

I had obtained a money judgment on behalf of a bank, and when it became final under state law, certain personal and real property owned by Smith became subject to seizure and sale in satisfaction of the judgment, pursuant to the North Carolina General Statutes governing enforcement of judgments. In post-judgment proceedings, I levied against assets owned by judgment debtor Smith. Execution papers were issued in the regular course through the office of the Pitt County Clerk of Court (Sandra Gaskins), and served through the office of the Pitt County Sheriff (Billy Vandiford), by the assigned deputy (T.G. Shane). At some point, Smith attempted to "remove" the state action. In the attempted removal process, he inserted my name, that of the sheriff, his deputy, and the clerk of court into the case caption as the defendants and inserted himself now as the plaintiff to the action. The district court remanded the matter back to state court in order entered July 10, 1996. On July 30, 1996, notice of appeal by Smith was filed. In a per curiam decision rendered March 10, 1997, in Case No. 96-2091, the Fourth Circuit affirmed the lower court's decision. The state judgment enforcement proceedings in the underlying state action, Case No. 94-CVS-481, were successfully concluded against Smith on behalf of the judgment creditor.

22. **Potential Conflict of Interest:** Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts of interest during your initial service in the position to which you have been nominated.

I shall recuse myself immediately from any case in which a conflict of interest exists. Review of the parties and counsel on a case-by-case basis, with deference to 28 U.S.C. § 455, should serve to promote the necessity of avoiding the appearance of any conflict in judicial matters coming before me. I also shall keep myself informed about my financial interests and those of my husband and our children. The only arrangement that I believe likely to present conflict is my marriage to a local attorney. In accordance with the foregoing, I shall not participate in any matter brought before the courts by the law firm of Ward and Smith, P.A., with whom my husband is associated, and I would expect the clerk of court automatically to accomplish transfer of any such case from my docket.

23. **Outside Commitments During Court Service:** Do you have any plans, commitments, or arrangements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

No, I do not.

24. **Sources of Income:** List sources and amounts of all income received during the calendar year preceding the nomination, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding \$500. If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.

See attached Financial Disclosure Report.

25. **Statement of Net Worth:** Complete and attach the financial net worth statement in detail. Add schedules as called for.

The statement and several schedules are attached.

26. **Selection Process:** Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts?

No, not that I am aware of.

- (a) If so, did it recommend your nomination?

N/A

- (b) Describe your experience in the judicial selection process, including the circumstances leading to your nomination and the interviews in which you participated.

I was contacted directly by a member of the Office of Counsel to the President who inquired whether I would be willing to be considered for a district judgeship. I responded affirmatively. I traveled to the White House in November 2002, at which time I met with two members of the Office of Counsel together with a member of the Office of Legal Policy. In December 2002, I was interviewed by a member of the Office of Legal Policy. Also in December, I was interviewed by an FBI field agent. I was nominated by the President on January 29, 2003.

- (c) Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as asking or seeking a commitment as to how you would rule on such case, issue, or question? If so, please explain fully.

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No, there has been no inquiry of me by anyone along lines described in this question.